

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

**U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090**



**U.S. Citizenship
and Immigration
Services**

B5.

DATE: **MAR 30 2012** OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

S. Perry Rhew
S. Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director then dismissed a motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the Form I-140 petition on May 4, 2009. The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a pediatrician and researcher of neurogenetic diseases. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on July 23, 2010, finding that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On August 25, 2010, the petitioner filed a timely motion to reconsider the decision. The director dismissed the motion on December 1, 2010, stating that the motion did not meet the requirements of a motion to reconsider. On December 28, 2010, the petitioner filed a timely appeal to the director's decision.

On appeal, the petitioner submits a brief and materials relating to her scholarly writings.

An appeal, a motion to reopen and a motion to reconsider are distinct from one another and serve different purposes; they are not simply interchangeable means by which a petitioner may contest an adverse decision. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In the December 1, 2010 decision, the director stated that the "motion neither provides precedent decisions to consider, nor establishes that the decision was incorrect based upon the evidence of record at the time." The director therefore dismissed the motion.

The latest filing is not an appeal of the original denial of the petition. Rather, the petitioner has appealed the dismissal of the motion to reconsider. The appellate process does not provide the petitioner with an indefinite or open-ended period in which to dispute the denial of a petition. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(i) requires the petitioner to file the appeal within 30 days after service of the decision. The time to file an appeal to the original decision elapsed in late September 2010. The petitioner's December 28, 2010 filing was only timely in relation to the director's second decision, issued December 1, 2010. Therefore, the AAO cannot consider the merits of the underlying petition until and unless the petitioner establishes that the director erred by dismissing the motion to reconsider. The petitioner cannot establish that error simply by reasserting the merits of the underlying petition.

The petitioner's appellate submission includes:

- An introductory statement, virtually identical to the statement that accompanied the prior motion to reconsider;
- A ten-page brief in which counsel disputes the original August 2010 decision, not the December 2010 dismissal of the motion (and which repeats, verbatim, portions of the introductory statement);
- Evidence relating to the petitioner's published and presented scholarly work; and
- Manuscripts of other scholarly writings.

In the appellate submission, the petitioner does not contest the director's decision of December 1, 2010. The petitioner does not demonstrate, or even attempt to explain, that the director should have accepted the August 2010 filing as a motion to reconsider. The petitioner simply filed an appeal of the initial decision, as though the intervening motion (and the director's dismissal thereof) had never happened.

The petitioner's appeal does not establish, or attempt to establish, that the director's most recent decision was in error. The AAO must, therefore, dismiss the appeal.

ORDER: The appeal is dismissed.